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10 Attorneys for Defendant
11 K12 SERVICES, INC.

12 UNITED STATES DISTRICT COURT
13
14 NORTHERN DISTRICT OF CALIFORNIA – OAKLAND DIVISION

15 DAVID ANDREW EHRENFELD, an
16 individual,

17 Plaintiff,

18 v.

19 K12 SERVICES, INC., a Delaware
20 corporation,

21 Defendant.

Case No. CV-13-5075 DMR

**DEFENDANT’S ANSWER TO
PLAINTIFF’S UNVERIFIED
COMPLAINT**

1. **Breach of Written Contract**
2. **Declaratory Relief**

Trial Date: None Set

22 Defendant K12 SERVICES, INC. (“Defendant”), hereby answers each paragraph of
23 Plaintiff DAVID ANDREW EHRENFELD’S (“Plaintiff”) Complaint as follows:

24 **PARTIES**

25 1. In response to Paragraph 1 of the Complaint, Defendant admits that Plaintiff was a
26 resident of the State of California and the County of San Francisco. Defendant further admits that
27 it employed Plaintiff from August 10, 2010 through January 25, 2013. Defendant denies that
28 Plaintiff’s separation date was January 14, 2013. Rather, Plaintiff’s employment ended on
January 25, 2013. Defendant denies each and every remaining fact allegation contained in
Paragraph 1 of the Complaint that is not expressly admitted herein.

2. Admit.

1 3. Paragraph 3 of the Complaint consists of legal conclusions to which Defendant is
2 not required to respond. To the extent a response is required, Defendant denies each and every
3 allegation contained therein.

4 **JURISDICTION AND VENUE**

5 4. Paragraph 4 of the Complaint consists of legal conclusions to which Defendant is
6 not required to respond. To the extent a response is required, Defendant lacks information and
7 belief sufficient to respond to the allegations contained in Paragraph 4 of the Complaint, and on
8 that basis, Defendant denies each and every allegation contained therein.

9 **FACTUAL ALLEGATIONS COMMON TO ALL CLAIMS**

10 5. In response to Paragraph 5 of the Complaint, Defendant admits only that Plaintiff
11 was hired August 10, 2010 as a National Account Manager and was offered an \$85,000 annual
12 salary, a \$10,000 signing bonus, and a variable commission plan. Defendant denies the
13 remaining allegations of paragraph 5 of the Complaint.

14 6. Defendant can neither admit nor deny the allegations set forth based in paragraph 6
15 of the Complaint based upon a lack of information upon which to form a belief. Upon that basis,
16 Defendant denies each and every allegation contained therein.

17 7. Defendant can neither admit nor deny the allegations set forth based in paragraph 7
18 of the Complaint based upon a lack of information upon which to form a belief. Upon that basis,
19 Defendant denies each and every allegation contained therein.

20 8. Defendant can neither admit nor deny the allegations set forth based in paragraph 8
21 of the Complaint based upon a lack of information upon which to form a belief. Upon that basis,
22 Defendant denies each and every allegation contained therein.

23 9. Defendant can neither admit nor deny the allegations set forth based in paragraph 9
24 of the Complaint based upon a lack of information upon which to form a belief. Upon that basis,
25 Defendant denies each and every allegation contained therein.

26 10. Defendant can neither admit nor deny the allegations set forth based in paragraph
27 10 of the Complaint based upon a lack of information upon which to form a belief. Upon that
28 basis, Defendant denies each and every allegation contained therein.

1 11. Defendant can neither admit nor deny the allegations set forth based in paragraph
2 11 of the Complaint based upon a lack of information upon which to form a belief. Upon that
3 basis, Defendant denies each and every allegation contained therein.

4 12. Defendant can neither admit nor deny the allegations set forth based in paragraph
5 12 of the Complaint based upon a lack of information upon which to form a belief. Upon that
6 basis, Defendant denies each and every allegation contained therein.

7 13. Defendant can neither admit nor deny the allegations set forth based in paragraph
8 13 of the Complaint based upon a lack of information upon which to form a belief. Upon that
9 basis, Defendant denies each and every allegation contained therein.

10 14. Defendant can neither admit nor deny the allegations set forth based in paragraph
11 14 of the Complaint based upon a lack of information upon which to form a belief. Upon that
12 basis, Defendant denies each and every allegation contained therein.

13 15. Defendant can neither admit nor deny the allegations set forth based in paragraph
14 15 of the Complaint based upon a lack of information upon which to form a belief. Upon that
15 basis, Defendant denies each and every allegation contained therein.

16 16. In response to Paragraph 16 of the Complaint, Defendant admits only that Plaintiff
17 signed a "Fiscal Year 2013 Sales Compensation Plan" on July 9, 2012. Defendant denies the
18 remaining allegations of paragraph 16 of the Complaint.

19 17. In response to Paragraph 17 of the Complaint, Defendant admits only that Plaintiff
20 signed a Fiscal Year 2013 "Individual Variable Compensation Plan" on August 7, 2012.
21 Defendant denies the remaining allegations of paragraph 17 of the Complaint.

22 18. In response to Paragraph 18, Defendant denies each and every allegation contained
23 therein. Plaintiff's employment ended on January 25, 2013.

24 FIRST CAUSE OF ACTION
25 BREACH OF WRITTEN CONTRACT
26 By Plaintiff Against K12

27 19. Defendant realleges and incorporates herein by reference its responses to
28 paragraphs 1 through 18 as though fully set forth herein.

1 20. In response to Paragraph 20 of the Complaint, Defendant denies each and every
2 allegation contained therein.

3 21. In response to Paragraph 21 of the Complaint, Defendant denies each and every
4 allegation contained therein.

5 22. In response to Paragraph 22 of the Complaint, Defendant denies each and every
6 allegation contained therein.

7 23. Paragraph 23 of the Complaint consists of legal conclusions to which Defendant is
8 not required to respond. To the extent a response is required, Defendant denies each and every
9 allegation contained therein.

10 SECOND CAUSE OF ACTION
11 DECLARATORY RELIEF
12 By Plaintiff Against K12

13 24. Defendant realleges and incorporates herein by reference its responses to
14 paragraphs 1 through 23 as though fully set forth herein.

15 25. In response to Paragraph 25 of the Complaint, Defendant admits only that Plaintiff
16 filed suit against Defendant and asserted claims relating to the variable commission/compensation
17 plans applicable to him during his employment. Defendant denies the remaining allegations of
18 paragraph 25 of the Complaint.

19 26. In response to Paragraph 26 of the Complaint, Defendant admits only the
20 allegation that Defendant denies Plaintiff is owed additional commission for sales during his
21 employment with Defendant. Defendant denies the remaining allegations of paragraph 26 of the
22 Complaint.

23 AFFIRMATIVE DEFENSES

24 By way of affirmative defenses to the allegations of Plaintiff's Complaint,
25 Defendant alleges as follows:
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1 **FIRST AFFIRMATIVE DEFENSE**
2 **(ARBITRATION AGREEMENT)**

3 The Complaint as a whole and each and every purported claim alleged therein is
4 barred from further civil proceedings because Plaintiff's sole remedy, if any, is governed by a
5 valid and enforceable arbitration agreement, in which Plaintiff agreed to arbitrate all employment-
6 related disputes.

7 **SECOND AFFIRMATIVE DEFENSE**
8 **(FAILURE TO STATE A CLAIM)**

9 The Complaint as a whole, and each purported cause of action alleged therein, fails
10 to state facts sufficient to constitute a cause of action against Defendant upon which relief may be
11 granted.

12 **THIRD AFFIRMATIVE DEFENSE**
13 **(OFFSET)**

14 Any recovery on the Complaint, or any purported claim therein, is barred in whole
15 or in part because Defendant is entitled to an offset for any monies Plaintiff received from any
16 source under the doctrine prohibiting double recovery.

17 **FOURTH AFFIRMATIVE DEFENSE**
18 **(FAILURE TO MITIGATE DAMAGES)**

19 Plaintiff is barred in whole or in part from recovering any damages, or any
20 recovery must be reduced, by virtue of Plaintiff's failure to exercise reasonable diligence to
21 mitigate his alleged damages. Further, Plaintiff's damages, if any, are to be reduced by all
22 income received by Plaintiff after his separation from employment with Defendant. Such income
23 shall include all earned income, state disability payments, social security payments, private
24 disability insurance, Medi-Cal and Medicare benefits, and any other monies paid to Plaintiff in
25 compensation for services rendered under any federal, state, or local program or from any private
26 insurance.

27 **FIFTH AFFIRMATIVE DEFENSE**
28 **(GOOD FAITH)**

 The Complaint, and each claim therein, is barred in whole or in part because all
 acts of Defendant affecting the terms and/or conditions of Plaintiff's employment were done in

1 good faith and motivated by legitimate, non-retaliatory and non-discriminatory reasons and/or as
2 a result of business necessity

3 **SIXTH AFFIRMATIVE DEFENSE**
4 **(PRIVILEGED CONDUCT)**

5 The Complaint, and each claim therein, is barred in whole or in part because all
6 acts of Defendant affecting the terms and/or conditions of Plaintiff's employment were
7 privileged, made without malice and taken with good cause.

8 **SEVENTH AFFIRMATIVE DEFENSE**
9 **(MANAGEMENT DISCRETION)**

10 The Complaint, and each claim therein, is barred because Defendant's actions
11 were a just and proper exercise of management discretion, were undertaken for a fair and honest
12 reason regulated by good faith under the circumstances then existing, and were based on
13 legitimate non-discriminatory and non-retaliatory business reasons.

14 **EIGHTH AFFIRMATIVE DEFENSE**
15 **(NO CONTRACT FOR COMPENSATION)**

16 Plaintiff's cause of action for breach of contract fails as a matter of law because
17 Plaintiff never contracted with Defendant regarding his compensation or commissions at any time
18 before or during his employment.

19 **NINTH AFFIRMATIVE DEFENSE**
20 **(STATUTE OF LIMITATIONS)**

21 To the extent discovery may disclose a factual basis for such defense, Plaintiff's
22 Complaint and each claim contained therein is barred in whole or in part by the applicable statute
23 of limitations, including, but not limited to, Cal. Code Civ. Proc. §§ 337, 339.

24 **TENTH AFFIRMATIVE DEFENSE**
25 **(RESERVATION OF RIGHTS)**

26 Because Plaintiff's Complaint is couched in broad and conclusory terms,
27 Defendant cannot fully anticipate all defenses that may be applicable to this action. Accordingly,
28 the right to assert additional defenses, if and to the extent that such defenses are applicable, is
hereby reserved.

WHEREFORE, Defendant prays for judgment as follows:

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1. That Plaintiff takes nothing by his Complaint;
2. That the Complaint be dismissed in its entirety with prejudice;
3. That the Plaintiff be denied each and every demand and prayer for relief contained in the Complaint; and
4. For cost of suits incurred herein, including reasonable attorneys' fees.

Dated: November 26, 2013

JACKSON LEWIS LLP

By:



Mark S. Askanas
David T. Wang
Attorneys for Defendant
K12 SERVICES, INC.

4826-1123-4071, v. 3